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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHOENIX SOLUTIONS INC.,

No. C 08-00863 MHP

Plaintiff,

v.

WELLS FARGO BANK, N.A., and WELLS
FARGO FUNDS MANAGEMENT, LLC.,

Defendants.

MEMORANDUM & ORDER

**Re: Motion for Leave to File First Amended
Answer**

On September 8, 2008, defendant Wells Fargo Bank, N.A. (“Wells Fargo”) moved for leave to file a first amended answer to plaintiff Phoenix Solutions Inc.’s (“Phoenix’s”) first amended complaint. The proposed first amended answer included additional factual allegations concerning defendant’s affirmative defense of inequitable conduct.

On September 16, 2008, the parties stipulated to and moved for an order permitting plaintiff to file a second amended complaint, for the purpose of adding Wells Fargo Funds Management, LLC as a defendant. That motion expressly stated that defendant’s answer to the second amended complaint should be filed within twenty days from the date of the order granting the motion, pursuant to Federal Rule of Civil Procedure 12. The order was granted and Phoenix filed its second amended complaint.

Over a week later, on September 26, 2008, Phoenix opposed defendant’s motion for leave to file a first amended answer, alleging futility of amendment, undue delay and undue prejudice. On October 2, 2008, Wells Fargo filed its answer to Phoenix’s second amended complaint. The following day, Wells Fargo filed a notice of withdrawal of its motion for leave to file a first amended answer, stating that it had received all the relief it requested by way of its answer to the second amended complaint, which contained all of the allegations that Wells Fargo had sought to add in its

1 first amended answer. On October 8, 2008, Wells Fargo Funds Management, LLC filed its answer
2 to Phoenix's second amended complaint.

3 To clarify and tidy up the record, the court takes notice of Wells Fargo's withdrawn motion
4 and has removed the October 20, 2008 hearing date from its calendar. The court agrees that Wells
5 Fargo's motion has been rendered moot by its answer which was filed as of right to Phoenix's
6 second amended complaint. The irony of Phoenix's opposition to defendant's motion for leave to
7 file a first amended answer, both in terms of its timing and its substantive allegation of undue delay,
8 is not lost on the court. The court is hopeful that this too is not lost on Phoenix.

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10 IT IS SO ORDERED.

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12 Dated: October 9, 2008



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14 MARILYN HALL PATEL
15 United States District Court Judge
16 Northern District of California
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